IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.134 OF 2005
IN
SUMMARY SUIT NO.2792 OF 2004

Gati Limited ....Plaintiff
V/s.
Oriental Enterprises & Anr. ....Defendants

Ms.Shilpa Kapil for the Plaintiff.
Ms.J.N. Pandhi for the Defendants.

CORAM : S.J. VAZIFDAR, J.
DATED : 19TH OCTOBER, 2005.

P.C. :

1. The suit is filed to recover the amounts due in respect of a dishonoured cheque.

2. The cheque was issued to the Plaintiff for service of transportation of goods on behalf of the Defendants. It is only after the receipt of notice of demand, that disputes were raised.

3. The only dispute raised is that the Plaintiff has not furnished a declaration from the importer i.e. Railways. It is submitted that in view of Section 194 of the B.M.C. Act, such a certificate would entitle the Defendants to claim exemption from the payment of octroi/refund of octroi, if already paid. It was for the Defendants to obtain such a declaration. There is

nothing on record which even remotely suggest that the Plaintiff was to procure such a declaration. Logically such a declaration can only be obtained by the Defendants.

4. There is no defence to the suit. There is some dispute regarding an amount of Rs.21,000/- having been paid in excess. In the circumstances, the Summons for Judgment is made absolute and the suit is decreed to the extent of Rs.61,000/- together with interest thereon at the rate of 18% p.a. from 4th December, 2003 till the date of the suit and thereafter at 6% p.a. till payment and/or realisation.

5. The Defendants are granted unconditional leave to defend the suit regarding the balance amount. The suit is transferred to the list of commercial causes regarding the balance amount. The Defendants to file their written statement within four weeks from today. Discovery and Inspection to be completed within six weeks thereafter. Summons for Judgment regarding balance amount stands disposed of accordingly.